dict v. *The Grand Trunk Railroad Co.*, 54 Id. 500. For the error in overruling the demurrer to the 3d paragraph of reply, the judgment must be reversed.

Supreme Court of Missouri.

KINEALY ET AL. *v.* ST. LOUIS, K. C. AND N. RAILWAY CO.

Where a highway is altered, obstructed, or altogether vacated, no action will lie for damages caused thereby, except for one who is specially injured, and the same rule should be applied to railroads as to other highways.

Whether a corporation has violated its charter can only be inquired into at the suit of the state, or of a private citizen who has suffered special damage by the acts complained of.

The depreciation in value of neighboring real estate, by the removal of a railroad depot and change of route, is not such special damage to each individual landholder as will give him a standing to question the right of the corporation to make the change.

The case of *Railroad Co.* v. *Compton*, 2 Gill 20, dissented from.

Where a duty arises for the public benefit, as to build a railroad under a charter, there is no implied contract or duty to individuals, either to construct it in the first instance or to maintain it afterwards, and therefore no action in favor of an individual can be maintained for its alteration or discontinuance.

APPEAL from St. Louis Court of Appeals.

The petition for damages set out the incorporation of the defendant company and the laying out of their road, including a depot at Jennings' station; that relying on the establishment of such depot, and on the faith of its maintenance, plaintiffs purchased certain land at Jennings' station and expended large sums of money in the improvement thereof; that subsequently defendant, without any new or other legal authority than that contained in the charter which had been already executed as above stated, built a new line of road and depot at Fourteenth street, in the city of St. Louis, and abandoned Jennings' station as a passenger line and depot, and disused it except for a local freight line and station; that such change and abandonment were unauthorized and unlawful, and by reason thereof the value of plaintiffs' lands was greatly decreased, to their damage, &c.

To this petition there was a demurrer, which was sustained by the Circuit Court, whereupon plaintiffs appealed.

M. Kinealy, for plaintiffs.—The change of route constituted an abandonment. The use made of the new line shows that it is the

main line, and not a mere branch: *Works* v. *Junction Railroad*, 5 McLean 425. A branch means a subordinate line to some other point, not a re-location of the main terminus: *Morris, &c., Railroad Co.* v. *Central Railroad*, 31 N. J. Law 208; *Newhall* v. *Galena, &c., Railroad*, 14 Ills. 273. There can be no abandonment or re-location without express authority: *Turnpike Co.* v. *Hosmer*, 12 Conn. 356; *Little Miami Railroad Co.* v. *Naylor*, 2 Ohio St. 235; *Blakemore* v. *Canal Co.*, 1 M. & K. 162: s. c. on appeal, 1 Cl. & Fin. 262; *Hudson, &c., Co.* v. *New York & Erie Railroad Co.*, 9 Paige 323; *State* v. *Norwalk, &c., Co.*, 10 Conn. 157. The change being unauthorized, plaintiffs may recover damages: *B. & S. Railroad Co.* v. *Compton*, 2 Gill 36; *Jackson* v. *Jackson*, 16 Ohio St. 168; *N. O. Railroad Co.* v. *Moye*, 39 Miss. 374. Plaintiffs having suffered special damage, may raise the question of violation of defendant's corporate powers: *Lackland* v. *N. Mo. Railroad Co.*, 31 Mo. 184; *Atkinson* v. *Railroad Co.*, 15 Ohio St. 36; *Carlin* v. *Paul*, 11 Mo. 32.

W. H. Blodgett, for appellees.

The opinion of the court was delivered by

SHERWOOD, J.—Whether the defendant acted in violation of its charter, when constructing its new, and in withdrawing its trains from its old route, past Jennings' station, is a question we do not propose to discuss, as it is a question which can only be raised by the state, except where such collateral inquiry by a private citizen is expressly granted by law: *Martindale* v. *Railroad Co.*, 60 Mo. 510, and cases cited. But disregarding any consideration of this nature, the plaintiffs' standing in court is not thereby bettered; for they do not allege that the injury complained of is one *special and peculiar to the party complaining;* an injury, in short, not shared by the other members of the community. For aught that appears in the petition, every lot-owner in Jennings', every owner of real estate in the vicinity, is as much damaged as is the wife of plaintiff by the withdrawal of defendant's trains, and the consequent depreciation in the value of real estate.

It is well settled that where a highway is altered, obstructed or altogether vacated, that no action will lie except by him *who "has greater hurt or incommodity than every other man has:" Holman* v. *Townsend*, 13 Met. 297; *Stetson* v. *Faxon*, 19 Pick. 147, and cases cited; *Brainard* v. *Railroad Co.*, 48 Vt. 107.

In the case last cited, where a plank-road had been located through the plaintiff's land, which route was afterwards condemned and applied to the use of a railroad company, it was said that "the injury that the plaintiff sustained by the loss of the use of the plank-road, is one that he sustains in common with the whole public. Every person who was accommodated by the use of the plank-road, sustains an injury of the same character and kind, differing only in degree, whether he lives upon the line of the road or elsewhere. The same injury would result from the abandonment of the road or from extinction from any cause. All the authorities agree that for such injuries damages are not allowed. But in the same it was held that the plaintiff was entitled to damages resulting from a destruction of the plank-road, because owing to such destruction, he was compelled to construct a private road from his buildings to the public highway, thereby sustaining an injury not common to the public generally but one peculiar to himself. To the same effect are *Proprietors of Quincy Canal Co.* v. *Newcomb*, 7 Met. 276; *Smith* v. *City of Boston*, 7 Cush. 254; Angell on Highways, §§ 283 and 285, and cases cited; *Stone* v. *Railroad Co.*, 68 Ills. 394; *Proprietors of Locks and Canals* v. *Railroad Corporation*, 10 Cush. 385.

In Ohio, a different rule prevails, as to the alteration of a highway, but it is there recognised as a clear exception to the rulo prevalent elsewhere. But even in that state it is held that no right of recovery exists where the plaintiffs' property was not taken, and where the alteration merely rendered the road less convenient for travel, without directly impairing his access to the road from the improvements on his land: *Jackson* v. *Jackson*, 16 Ohio St. 163. So, that even in that state, the doctrine of a *special* injury in order to a right of recovery is recognised as fully as in the Vermont Case, *supra*. In *Railroad Co.* v. *Naylor*, 2 Ohio St. 235, the railway had been located and operated on a certain street for some time, but the company, without authority of law, re-located their road, and in so doing, ran within a few feet of the premises of Naylor and in front of his house, used both for a dwelling and grocery, thus impairing the value of his house as a dwelling, and ruining it as a grocery-stand; and he was held entitled to recover. But confessedly, that right of recovery was based upon the ground of the direct and *special* injury sustained, for this was the very *gravamen* of the action.

The case of *Railroad Co.* v. *Compton*, 2 Gill 20, so strongly relied on by plaintiffs, as being directly in point in their favor, is not an elaborately considered case, nor are any arguments, or reasons given, or authorities cited for the conclusion reached. But, still, I think it will perhaps be found that even that case proceeds upon the general theory heretofore announced, of an injury to the party complaining different from that suffered by the rest of the community. For it is expressly said in the opinion: "The question to be tried by the jury impannelled in the county court, was the extent of the injury which resulted to the plaintiffs by the abandonment and discontinuance of the railway on *their lands*, and its location and construction on the lands of another person." This language would seem to indicate that the plaintiffs desired legal redress for injuries *peculiar* to themselves, as landowners, in the deprivation of facilities theretofore enjoyed by them, by reason of the withdrawal of the railway from their lands. If this is the theory of that case, the correctness of the conclusion arrived at cannot be questioned. But the case is very obscurely and unsatisfactorily reported, and if it is to be understood in a different way than that I have stated, it is certainly at variance with the principle asserted in the cases already cited; and no reason is seen why the same doctrine should not control in relation to actions by private individuals for the abandonment of railway routes, as well the abandonment of any other highways whatsoever.

If the same principle is to control in each class of cases, then it is quite clear that plaintiffs by failing to allege an injury sustained special in its nature to themselves, have failed to state any ground of recovery—and no case, except perhaps in Maryland, even remotely intimates a contrary view; the cases cited from our own reports and the one cited from Mississippi certainly do not. I take it that there is wide difference between a private individual bringing suit against a railway company for special damage, for obstructing the street in front of his lot, thus cutting off every opportunity of ingress or egress, as in the *Lackland case*, and the more recent one of *Tate* v. *Railroad Co.*, 64 Mo. 149, and the bringing of a similar suit, where *no* damage is alleged, because a railway company has discontinued its trains or abandoned its road. Whatever redress is to be afforded under the last-mentioned circumstances, can be obtained only by the authority which granted its franchises to the derelict company: *Attorney General* v. *Railway Co.*, 36 Wis. 467.

Again, there was no contract between the railway company and plaintiffs, either expressed or implied, that the company should continue to maintain its road or run its trains. "Whenever an action is brought for a breach of duty, the party bringing it must show that he has an interest in the performance of the duty and that the duty is imposed for his benefit, and when the duty is imposed for the benefit of another, *or for the public benefit and his own advantage, is merely incidental* and is no part of the design of the statute, no such right is created as forms the subject of action." Field on Damages, § 39. Here, it is evident that the construction of the road and its maintenance were authorized by legislative enactments *solely* for the "public benefit," and not for the benefit of any individual composing the public. So that, as between the plaintiffs and the defendant company, there is neither breach of contract nor breach of duty, and consequently no right of action. And this case, therefore, so far as concerns plaintiffs, stands precisely as if they had bought lots and built thereon, contiguous to any other public improvement on the faith of the continuance of such improvement.

A recent writer observes, in reference to the discontinuance of such improvements: "There is no contract with surrounding property owners, that a public improvement shall always exist as at present; and no damages will be allowed for its discontinuance, notwithstanding improvements may have been made on the supposition that they will remain, and not withstanding property has been thereby enhanced in value:" Mills on Eminent Domain, § 317; *Brooklyn Park* v. *Armstrong*, 45 N. Y. 234.

For the foregoing reasons, we are of opinion that the judgment should be affirmed.

HOUGH, J., concurred merely in the result.